IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

WP(C).No. 636 of 2006(A)

PETITIONER:

A.ABDUL RAZAK, PEON,
T.K.M.COLLEGE OF ENGINEERING,
KOLLAM-5.

BY ADV. SRI.ELVIN PETER P.J.
SRI.S.RAMESH
SRI.P.N.SANTHOSH
SRI.NAVEEN.T
SRI.T.G.SUNIL (PRANAVAM)
SMT.POOJA SURENDRAN

RESPONDENTS:
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1. THE CHAIRMAN, GOVERNING BODY,
T.K.M.COLLEGE OF ENGINEERING, KOLLAM-5.

2. THE PRINCIPAL, T.K.M.COLLEGE OF
ENGINEERING, KOLLAM-5.

3. S.REMY, LIBRARIAN GRADE IV,
T.K.M.COLLEGE OF ENGINEERING, KOLLAM-5.

4. THE DIRECTOR OF TECHNICAL EDUCATION,
THIRUVANANTHAPURAM.

R1 & R2 BY ADV. SHRI HARUN AL. RASHEED.

BY ADV. SRI.P.B.SURESH KUMAR

R4 BY GOVT. PLEADER (SMT. M. R. SREELATHA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C) NO.636 OF 2006

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF ORDER NO.DP2/27823/2000 DATED 5.8.2000 OF THE FOURTH RESPONDENT.

EXT.P2 TRUE COPY OF THE RELEVANT PAGE OF THE SSLC BOOK OF PETITIONER.

EXT.P3 TRUE COPY OF CERTIFICATE DATED 4.1.2006 ISSUED BY THE UNIVERSITY OF KERALA.

EXT.P4 TRUE COPY OF MARK LIST DATED 28.6.2005 ISSUED BY THE UNIVERSITY OF KERALA.

EXT.P5 TRUE COPY OF CERTIFICATE DATED 11.7.2005 ISSUED BY THE UNIVERSITY OF KERALA.

EXT.P6 TRUE COPY OF NOTIFICATION DATED 1.6.2005 PUBLISHED IN THE HINDU DAILY DATED 11.6.2005.

EXT.P7 TRUE COPY OF REPRESENTATION DATED 25.6.2005 SUBMITTED BY PETITIONER BEFORE FIRST RESPONDENT.

EXT.P8 TRUE COPY OF MEMO DATED 28.10.2005 ISSUED BY THE COLLEGE.

EXT.P9 TRUE COPY OF APPOINTMENT ORDER DATED 15.12.2005 OF THE THIRD RESPONDENT ISSUED BY THE FIRST RESPONDENT.

EXT.P10 TRUE COPY OF REPRESENTATION DATED 21.12.2005 FILED BY THE PETITIONER BEFORE THE FOURTH RESPONDENT.

EXT.P11 TRUE COPY OF THE SPECIAL RULES FOR THE KERALA COMMON POOL LIBRARY SUBORDINATE SERVICE ISSUED AS PER G.O. DATED 26.8.2003.

// TRUE COPY//

PS TO JUDGE

K. M. JOSEPH, J.

W.P.C NO. 636 OF 2006 A

Dated this the 29th November, 2006

JUDGMENT

Case of petitioner, in brief, is as follows:

Petitioner was appointed as Peon in a leave vacancy in the second respondent's College. Thereafter, he was getting continuous appointment. When he was appointed, he was having SSLC as is evident from Ext.P2. A vacancy of Librarian Gr.IV arose in the College due to the retirement of Shri Thajudeen Koya on 31.12.2004. He had completed the course leading to Certificate in Library and Information Science conducted by the University. But, he did not secure a pass. He passed in the examination conducted in April, 2005. The result was published on 10.6.2005. Ext.P4 is the mark list. Ext.P5 is another Certificate showing that he has passed in the IIIrd Class. The qualification for the post of Librarian Gr. IV is SSLC and Certificate in Library Science. He refers to Statute 66 of Chapter III of the Statutes. It reads as follows:

"66. Filling up of vacancies:- Subject to the rules in force in similar Government Institutions regarding qualifications and method of appointment, the vacancies in the higher grades shall be filled up by promotion from the next lower categories, if qualified persons are available, according to seniority in the case of non-selection posts, and according to merit and seniority in the case of selection posts and if there are no candidates available for promotion to higher grades, the posts shall be filled up by direct recruitment by inviting applications and selection by the management in the manner laid down in these Statutes.

Provided that the Library/Laboratory Attenders possessing the prescribed qualifications shall be eligible for promotion as IV Grade Librarian."

2. According to petitioner, Ext.P6 Notification dated 1.6.2005 is published in the Hindu Daily on 11.6.2005. According to petitioner, the process of direct recruitment

commenced only by the issuance of the Notification on 11.6.2005 and before that he was qualified for promotion. Therefore, he contends, steps taken for direct recruitment are patently illegal, as he was available for promotion. Petitioner submitted Ext.P7 representation and he was called for interview by Ext.P8. He produced the necessary Certificates also. But, without appointing him, the third respondent was appointed as Librarian Gr.IV vide Ext.P9 order. Petitioner submitted Ext.P10 representation. He challenges Ext.P9 and seeks a direction to give promotion to him in the vacancy and other consequential benefits.

3. Counter Affidavit has been filed by respondents 1 and 2 and also the third respondent. They have principally taken two contentions. Firstly, it is contended that petitioner having participated in the interview, he is estopped from turning around and challenging the appointment made pursuant to Ext.P6. It is further contended on behalf of third respondent that actually petitioner is not even in the next below feeder category as

contemplated in Statute 66 relied on by petitioner. He would point out that the next below category is the category of Librarian Assistant and petitioner does not possess qualification of pass in Attender test conducted by the Public Service Commission. It is further pointed out that the vacancy arose on 1.1.2005. On 12.4.2005, second respondent sought permission of first respondent to fill up the aforesaid vacancy and on getting permission from first respondent, second respondent by letter dated 26.4.2005 requested for permission of the Director of Technical Education to notify the said vacancy and to conduct the selection process. On 26.5.2005, the Director accorded approval to fill up the post. Accordingly, it is stated that the post was notified as per Notification dated 1.6.2005 and the publication was effected on 11.6.2005. Therefore, it is stated that petitioner is not entitled to claim the benefit of the Statute.

4. In the Reply Affidavit filed, a new case is set up. It is stated that as per the Statute, the qualification and method of

appointment as disclosed in the relevant Special Rules followed in the Government Institutions, is the Special Rules for the common pool of Library Subordinate Service. It is produced as Ext.P11. It is stated that fifty per cent of the vacancies shall be filled up by transfer and the remaining fifty per cent by direct recruitment. It is stated that there is a ratio between Degree, Diploma and Certificate holders as 3:1:1. Order of rotation is also provided. It is ignoring the same that the Notification is issued. It is stated that the first appointment is by transfer and the second is by direct recruitment. In Statute 66, it is stated that if there are no candidates available for promotion to the higher grades, the posts shall be filled up by direct recruitment.

5. Going by the state of pleadings, it cannot be disputed that there arose a vacancy on 1.1.2005. Admittedly, petitioner was not qualified as on the date of occurrence of vacancy. Thereafter, various steps were taken by respondents 1 and 2 and steps were taken on the part of respondents 1 & 2 to fill up the post by direct recruitment. Fourth respondent granted sanction

and ultimately the post was notified on 1.6.2005. Petitioner was not admittedly qualified on any of those days inclusive of 1.6.2005. On his own showing, he became qualified only on declaration of his result on 10.6.2006. I feel that the petitioner cannot rely on the fortuitous circumstances of the publication of the notification in the papers on 11.6.2006 to lay claim to the post on the strength of Statute 66. In Statute 66, it is stated that if there are no candidates available for promotion, the post is to be filled up by direct recruitment. The question as to reference to which date this question has to be decided is crucial. The date of occurrence of vacancy is a constant date. The title to be promoted on a general principle should depend upon possession of requisite qualifications with reference to such a constant date. The time taken to fill up the vacancy in the absence of a qualified hand for promotion by direct recruitment cannot clothe the aspirant for promotion with a right to question the decision to resort to direct recruitment in the absence of a qualified hand on the date of occurrence of the vacancy. In this case, petitioner

was not qualified even when the Director gave sanction on 12.5.2005 and what is more, even on the date on which day the notification was published on 1.6.2005. Another feature canvassed by respondents is that petitioner should be held to be disentitled by reason of his conduct in applying and being called for interview and losing out in the interview. In fact, counsel for respondents 1 & 2 points out the statement in the Counter Affidavit that petitioner was called for interview and he attended the interview and he was called for the interview based on his application. That is also another ground. I find that there is some merit in the contention also. Therefore, on a whole, petitioner has failed to make out a case. The Writ Petition is dismissed.

Kbk. **K. M. JOSEPH, JUDGE**